

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on January 4, 2012
Sacramento, California**

PRESENT:

Art R. Carter, Chairperson
Candice A. Traeger, Board Member
Ed Lowry, Board Member
Ursula Clemons, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Phyllis Eldredge, Staff Services Analyst

MINUTES OF DECEMBER 21, 2011:

(Approval of minutes recording actions of previous Board meeting)

ACTION: Member Lowry moved that the Board vote to approve the draft Minutes of the December 21, 2011 Board meeting for posting. Member Traeger seconded. The Board voted to approve the December 21, 2011 Board meeting Minutes for posting.

ADMINISTRATIVE MATTERS:

(Review and discuss most current Board statistics)

1. STATISTICS

ACTION: Executive Officer Wimberly reported on calendaring statistics for 2011.

a. YEARLY STATISTICS

ACTION: No report

NEW BUSINESS:

(The Appeals Board hears and/or discusses new matters brought before the members.)

1. 2011/2012 BUDGET

(Review and discuss budget issues for the next fiscal year)

ACTION: No report

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

1. ADVISORY COMMITTEE MEETINGS

ACTION: Member Lowry provided input on regulatory items for the Advisory Committee agenda. The Board approved the draft agenda for distribution.

LEGISLATION:

ACTION: Nothing to report

CHAIRPERSON'S REPORT:

ACTION: Chair Carter thanked Board staff for their efforts in preparation for his and Member Lowry's confirmation hearing.

BOARD MEMBER'S REPORT:

ACTION: None

EXECUTIVE OFFICER'S REPORT:

ACTION: Executive Officer Wimberly provided an update on the Video Teleconferencing project. He noted that all equipment should be installed by February 1, 2012.

STAFF REPORTS:

ACTION: Counsel Johnson reported that the Board's 2010 regulatory package was submitted to the Office of Administrative Law on December 29, 2011 for final approval.

PUBLIC COMMENT:

ACTION: None

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

A. TEICHERT & SONS DBA TEICHERT CONSTRUCTION, 09-R4D5-0459
AND 0460

ACTION: Member Traeger moved that the Board vote to reconsider this Decision of an Administrative Law Judge on its own motion. Member Lowry seconded. The Board voted to reconsider this Decision of an Administrative Law Judge on its own motion.

ARMOUR STEEL CO., 08-R2D1-2649 THROUGH 2655

ACTION: Member Lowry moved that the Board vote to reconsider this Decision of an Administrative Law Judge on its own motion. Member Traeger seconded. The Board voted to reconsider this Decision of an Administrative Law Judge on its own motion.

HOME DEPOT, 10-R3D6-3284

ACTION: Member Lowry moved that the Board vote to reconsider this Decision of an Administrative Law Judge on its own motion. Member Traeger seconded. The Board voted to reconsider this Decision of an Administrative Law Judge on its own motion.

SIGN DESIGNS, INC., 08-R2D3-4686

ACTION: Member Lowry moved that the Board vote to approve this Decision of an Administrative Law Judge. Member Traeger seconded. The Board voted to approve this Decision of an Administrative Law

Judge.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

ACCO ENGINEERED SYSTEMS, INC., 10-R2D1-1726
AGUAYO CONTRACTING, INC., 10-R6D7-2279
ALEJO GROCERS, INC. DBA LIBORIO MARKETS, 10-R4D1-4026 THROUGH 4028
ASR CONSTRUCTORS, INC., 11-R3D3-2502
AT&T LIGHTSPEED CONSTRUCTION, 09-R2D1-1634
B & J AUTO CENTER, INC., 11-R6D7-1141 AND 1142*
BARNHART-BALFOUR BEATTY, INC., 11-R3D5-1267
BARREL TEN QUARTER CIRCLE, INC., 10-R1D5-1351 AND 1352
EVODIO BOLANOS, 11-R3D6-2505 THROUGH 2509
CA CORRECTIONS & REHABILITATION – IRONWOOD, 10-R3D3-2929
CALIFORNIA SKATEPARKS, 11-R4D1-0554 AND 0555
FELIPA OFELIA CARRETE AND PAOLA GUTIERREZ DBA PG, 11-R6D5-2314 AND 2315
CERTIFIED TIRE & SERVICE CENTERS, INC., 11-R1D4-0594*
COMMUNITY CAREER DEVELOPMENT, INC., 11-R4D1-0029
DELTA PACKING OF LODI, INC., 11-R6D7-1672 THROUGH 1675
DELTA WINDOW CLEANING COMPANY, INCORPORATED, 10-R2D2-3889 THROUGH 3891
B. DIERMENJIAN D.D.S. DBA SACRAMENTO DENTAL ARTS, 09-R2D1-0896 THROUGH 0899
DELTA WINDOW CLEANING COMPANY, INCORPORATED, 10-R2D2-3889 THROUGH 3891
EMPIRE FLOOR COVERING LLC, 11-R4D2-0397
ENVIRONMENTAL CONSTRUCTION GROUP, 10-R1D1-3055
FABRICA INTERNATIONAL, INC., 11-R3D1-1161
GOLDEN ACRE FARMS, INC., 11-R6D5-1862 THROUGH 1864
ESTANISLAO PEREZ GONZALEZ, 10-R4D1-3870 THROUGH 3872
GUDGEL YANCEY ROOFING, INC., 09-R2D3-2990
HAYWARD BAKER, INC., 11-R5D1-1822
HEPPNER HARDWOODS, INC., 11-R6D2-0901 THROUGH 0907
HERB THYME FARMS, 11-R4D2-0666
SERGIO HERNANDEZ, AN INDIVIDUAL DBA TORNADO PAINTING, 11-R3D2-2296 AND 2297*
INTERNATIONAL SURFACING SYSTEMS, 10-R1D5-2936*
ITU CONSTRUCTION, INC., 11-R6D7-1766
J & J ACOUSTICS, INC., 10-R1D2-2382
JOHN BEAN TECHNOLOGIES CORP. DBA JBT FOOD TECH, 11-R2D5-1049 AND 1050
KIEWIT PACIFIC CO., 08-R2D1-3829
KIWI PRESCHOOL & CHILDCARE, 10-R1D5-2967
LA LIVE PROPERTIES, 11-R4D1-0990
LAUSD IRVING MIDDLE SCHOOL, 11-R4D2-0518
JASON J. LEE, D.D.S., 10-R2D1-2391

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LOS GATOS CONSTRUCTION CO., INC., 10-R1D4-1276 AND 1277
M C PAINTING, 11-R6D5-2528
M. L. ELECTRICWORKS, INC., 10-R3D2-3206 AND 3207*
MAGGIORA & GHILOTTI, INC., 10-R1D5-2608
MILLCREEK CONSTRUCTION GROUP, INC., 10-R2D1-0401 AND 0402
JAMES MORENTIN DBA FARMER'S OUTLET, 11-R6D5-2390
NAMASCO CORPORATION, 10-R6D2-3664 and 11-R6D2-0286 THROUGH 0293 and 11-R6D2-0342*
PACIFIC PROVIDENCE CONSTRUCTION, INC., 11-R3D2-2826 AND 2827
JAMES PAPENHAUSEN II DBA PAPENHAUSEN CONSTRUCTION, 11-R6D5-2329 AND 2330
PENINSULA IMPROVEMENTS, INC. DBA CERTAPRO PAINTERS, 11-R6D7-1807
PIONEER HI-BRED INTERNATIONAL, INC., 08-R2D1- 4421 AND 4422
PREMIER ROOFING CA, INC., 11-R3D2-1382
PREMIUM WOOD STAKES, INC. DBA PALLET MASTER, 11-R6D5-1801 THROUGH 1806
PURRFECT AUTO SERVICE, 11-R3D6-2201 AND 2202
QUEST DIAGNOSTIC LOGISTIC DIVISION, 11-R2D5-0880
VALERIE SAMUELSON DBA VAL'S DINER, 11-R6D7-0454
SEDONA WEST ROOFING, INC., 11-R4D2-0626 AND 0627*
SHEET METAL FABRICATION AND SUPPLY, INC., 09-R2D1-1101 THROUGH 1104
SIERRA PACIFIC INDUSTRIES, 08-R2D1-3826 THROUGH 3828
STATER BROTHERS DEVELOPMENT, INC., 10-R6D7-3195
TACTICAL SERVICES, INC., 11-R3D3-2340 AND 2341
TAYLOR MADE EXTERIORS, 10-R6D7-2211 AND 2212*
THE BARRICADE COMPANY AND TRAFFIC SUPPLY, INC., 10-R1D5-2826
VESSEY AND COMPANY, INC., 11-R6D5-2554 AND 2555
VIEIRA AGRICULTURAL ENTERPRISES, 09-R2D4-3285 AND 3286
VIEIRA AGRICULTURAL ENTERPRISES, 10-R6D7-2360
VOGUE SIGN COMPANY, 10-R6D2-2791 THROUGH 2794
W. D. YOUNG & SONS, INC., 11-R3D3-2533
W. D. YOUNG & SONS, INC., 11-R3D3-2534
WEST COAST SHOES, INC. DBA WEST COAST SPORTING GOOD, 10-R6D7-0120 AND 0121

ACTION: Member Traeger moved that the Board vote to approve these Orders of Administrative Law Judges. Member Lowry seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196

ACTION: Member Lowry moved that the Board vote to reconsider this Order of an Administrative Law Judge on its own motion. Member Traeger seconded. The Board voted to reconsider this Order of an Administrative Law Judge on its own motion.

ORDERS DISMISSING APPEALS:

AMERICAN MECHANICAL CONSTRUCTION, INC., 11-R2D3-0580 AND 0581
ASMA AUTO MANAGEMENT, INC. DBA PURRFECT AUTO SERVICE #232,
11-R2D1-0011 AND 0012
DEL NORTE COUNTY UNIFIED SCHOOL DISTRICT, 11-R2D1-0250
LIFETIME AUTO BODY, INC., 11-R6D5-0612 AND 0613
R3 CONTRACTORS, 11-R3D6-0190

ACTION: Member Lowry moved that the Board vote to approve these Orders Dismissing Appeals. Member Traeger seconded. The Board voted to approve these Orders Dismissing Appeals.

PETITIONS FOR RECONSIDERATION:

SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 07-R2D3-0275 THROUGH 0280

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Traeger seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

DENIALS OF PETITIONS FOR RECONSIDERATION (DRAFTS):

BAY POLYMER CORPORATION, 10-R1D2-1655 AND 1656

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Traeger seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

CENTRAL FREIGHT LINES, INC., 10-R2D1-1888

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Traeger seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

HOLLANDER HOME FASHIONS, 10-R4D2-3704 THROUGH 3706

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Traeger seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature as amended.

MOHAMMED ARSHAD DBA A & Z AUTO BODY SHOP, 11-R6D7-9204

ACTION: Member Traeger moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Lowry seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

MATTERS PENDING RECONSIDERATION:

AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
AC TRANSIT, 08-R1D4-0135

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AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

AGWOOD MILL & LUMBER, INC., 08-R1D5-1068

VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY DBA
ANTONSEN CONSTRUCTION, 06-R2D3-1272

ANNING-JOHNSON COMPANY, 06-R1D3-1976

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Traeger seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221

BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963

BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448

BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO.,

09-R6D2-2239 THROUGH 2241

BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563

C & M FARM LABOR SERVICE, INC., 11-R2D5-0050

ACTION: Member Lowry moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Traeger seconded. The Board voted to approve Order of Remand for this matter pending reconsideration.

C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155

C.C. MYERS, INC., 08-R1D1-952 THROUGH 955

CA RASMUSSEN, INC., 08-R4D5-219 AND 220

MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR

08-R6D5-3466 AND 3467

ACTION: Member Lowry moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Traeger seconded. The Board voted to approve Order of Remand for this matter pending reconsideration.

COMMERCIAL METAL FORMING, 09-R3D1-1592

CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960

CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362

DESIGN BUILDERS, INC., 08-R4D4-1901

DUININCK BROS., INC., 06-R4D3-2871

DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177

DUKE PACIFIC, INC., 08-R3D3-574

EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,

09-R6D2-2325 THROUGH 2332

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EZ MIX, INC., 08-R4D3-1898
FORTUNA IRON WORKS, 06-R2D3-4222
HB PARKCO, 07-R4D2-1730 AND 1731
THE HERRICK CORP., 07-R3D1-495

INTERPAC TECHNOLOGIES, INC., 08-R2D1-4199 AND 4200

ACTION: Member Lowry moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Traeger seconded. The Board voted to approve Order of Remand for this matter pending reconsideration.

JENSEN PRECAST, 05-R2D1-2377
JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
L & S CONSTRUCTION, 10-R3D2-1822
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254

L N I CUSTOM MANUFACTURING, 10-R6D2-9154

ACTION: Member Lowry moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Traeger seconded. The Board voted to approve Order of Remand for this matter pending reconsideration.

LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
MARINE TERMINALS, 08-08-R6D2-1920
MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274

MOOREFIELD CONSTRUCTION, INC., 10-R3D5-9207

ACTION: Member Lowry moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Traeger seconded. The Board voted to approve Order of Remand for this matter pending reconsideration.

MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
P G & E CORPORATION DBA PACIFIC GAS & ELECTRIC CO., 11-R4D3-9132
POUK & STEINLE, INC., 09-R3D3-0491
RAMON ARANDA dba I & R PALLETS, 10-R6D5-9053
RIEZEBOS CONSTRUCTION, INC., 08-R2D5-1730
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048

JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710

SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-0655

ACTION: Member Lowry moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Traeger seconded. The Board voted to approve Order of Remand for this matter pending reconsideration.

SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHERWOOD MECHANICAL, INC., 08-R3D2-4690 THROUGH 4693
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SMUD, 08-R2D1-4887 THROUGH 4889

SODEXO HEALTH CARE, 11-R4D1-0200 AND 0201

ACTION: Member Lowry moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Traeger seconded. The Board voted to approve Order of Remand for this matter pending reconsideration.

MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
08-R2D1-3414 THROUGH 3418
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,
05-R2D4-2650 AND 2651
UNITED PARCEL SERVICE, 07-R3D3-3322

VIP MOBILE DETAILERS, INC., 11-R2D4-0705

ACTION: Member Traeger moved that the Board vote to approve this Stipulation. Member Lowry seconded. The Board voted to approve this Stipulation.

WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095

LEGISLATION:

(Discussion of pending legislation which may affect the Board).

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

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1. JERLANE, 37-2009-00059323-CU-WM-NC (08-1733)
ACTION: No report
2. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB),
34-2007-00882192-CU-WM-GDS, (01-3261)
ACTION: No report
3. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB)
(00-440)
ACTION: No report
4. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
ACTION: No report
5. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
ACTION: No report
6. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
ACTION: No report
7. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
ACTION: No report
8. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-
R5D1-3611)
ACTION: No report
9. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640
(08-R2D1-0027 THROUGH 0030)
ACTION: No report
10. EMERSON RUSSELL MAINTENANCE CO., RG-10543219 (08-R1D4-4167)
ACTION: No report
11. SMUD, 34-2010-80000723 (08-R2D1-4887)
ACTION: No report
12. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
ACTION: No report
13. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
ACTION: No report
14. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-
0188~0191)

ACTION: No report

15. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010
(08-R2D1-3273)

ACTION: No report

16. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH
2461)

ACTION: Chief Counsel Mojcher provided an update on this matter.

COURT OF APPEAL

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

ACTION: No report

PERSONNEL:

(Issues regarding staff)

ACTION: No report

The Closed Session adjourned at 1:20 P.M., and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. With no further business, the meeting was adjourned at 1:21 P.M.